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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 1173

HARLEY D. JONES,

Plaintiff-Appellant,

vs.

STATE OF ILLINOIS BY ITS ELECTORAL BOARD,

Defendant-Appellee.

(On Appeal from the Supreme Court of Illinois)

MOTION TO DISMISS

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The State of Illinois, by its Electoral Board, by William J. Scott, Attorney General of the State of Illinois, moves to dismiss this appeal from the Supreme Court of Illinois on the ground that the substantial federal question, if any, is completely covered by the case entitled *James L. Moore, et al.*, plaintiffs-appellants vs. *Samuel Shapiro, Individually, and as Governor of the State of Illinois, et al.*, defendants-appellees, No. 620 Oct. Term 1968, in which case oral

arguments were submitted to this court on March 27, 1969, and this Honorable Court has those issues presently under consideration and that a decision in that case will control all issues in the instant case.

THE OPINION BELOW

The opinion of the Supreme Court of the State of Illinois is fully set forth in Appendix A, Petitioners' Jurisdictional Statement.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Jurisdictional Statement.

QUESTIONS PRESENTED

The three questions presented are adequately set forth in the Jurisdictional Statement.

STATUTES INVOLVED

This case involves a challenge to the validity and constitutionality of Section 10, Article III of the Illinois Election Code, the pertinent part of which section is adequately set forth in the Jurisdictional Statement.

ARGUMENT

I.

The appeal should be dismissed as the plaintiff has presented no issue that will not be completely determined and controlled by the decision to be rendered by this Court in the case presently under advisement by it, entitled *James L. Moore, et al.* plaintiff-Appellants, vs. *Samuel Shapiro, Individually and as Governor of the State of Illinois, et al.,* Defendants-Appellees, No. 620 October Term, 1968.

The defendant wishes to point out that the requirements of the statute involved place no substantial obstacles in the path of any independent candidate seeking to have his name printed on the ballot in a general election. Witness the amazing record of Lar Daly in presidential elections over the years. Defendant wishes, however, to point out the type of electoral Pandora's box that would be opened should this Court decide to hold the provisions of the statute in question unconstitutional. As was brought out in the oral argument in the case of *Moore* v. *Shapiro, supra,* the Democratic Party of Cook County has the power to nominate as its candidate anyone it chooses, completely ignoring the wishes of the Democratic Party of the remaining 101 democratic counties of the State of Illinois.

Let us retreat into the past and look at a hypothetical situation. The Democratic organization in Cook County decided to nominate as the official Democratic candidate for Governor Samuel Shapiro. Let us assume that the Democratic organizations in the 101 counties unanimously

favored either Adlai A. Stevenson III, the State Treasurer of the State of Illinois, or William G. Clark, the then Attorney General of the State of Illinois under the existing electoral law. Any 50 of these Democratic organizations could have easily filed nominating petitions nominating either Mr. Stevenson or Mr. Clark as the independent Democratic candidate whose name would be placed on the ballot of the November general election, at which time all of the registered Democrats in the State of Illinois, plus all of the independent voters, plus all of the registered Republican voters, could have cast their vote for such independent candidate. Let us turn now to a hypothetical set of facts with our attention concentrated on the Republican candidate for governor. Governor Richard B. Ogilvie of the State of Illinois won a close primary victory over John Henry Altorfer, a downstate candidate for the Republican nomination for Governor. Without the safeguards afforded by the Election Code provisions which require at least 200 signatures from at least a minimum of 50 counties, Mr. Altorfer could have declined to enter the Republican primary, but could have secured 25,000 signatures from his home county of Peoria and have had his name placed on the ballot at the general election as an independent candidate for Governor. Had Mr. Altorfer been permitted to take such course of action, Samuel H. Shapiro would today be the Governor of Illinois, contrary to the wishes of a majority of the people of the State of Illinois.

We submit that the provision of the Electoral Code under attack in this case and in the case of *Moore* v. *Shapiro, supra,* is reasonable and essential to the fair operation of the Republican form of government in the State of Illinois.

II.

The third question raised by the plaintiff does not present a substantial question and should be dismissed.

Plaintiff attempts to argue that the statute is unconstitutional in so far as it prohibits persons who have voted in a primary from signing nominating papers for independents who wish to have their names listed on the ballot at the general election. When a person signs a nominating petition for an independent candidate he is in effect casting a primary vote for said candidate since, if the requisite number of qualified voters sign that petition, such independent candidate will appear on the ballot in the next general election along with those candidates who are nominated in the primary election.

This case differs from *Moore* v. *Shapiro, supra,* only in that the plaintiff herein attacks the restriction of registered voters who have voted in the primary from signing nominating petitions for independent candidates. Let us take the most recent gubernatorial election as we did above and make a few assumptions. *Arguendo,* Samuel H. Shapiro was unopposed in the Democratic primary. Governor Richard B. Ogilvie had to overcome the challenge of three other primary candidates, the most formidable of whom was John Henry Altorfer, a capable and qualified Republican candidate from the downstate county of Peoria. Let us assume that, instead of entering the Republican primary, Mr. Altorfer sat on the sidelines during the June primary ballotting in 1968 and let Mr. Ogilvie sweep to an overwhelming primary victory rather than to the close primary victory he won over Mr. Altorfer. Without the protection of the prohibition against persons who had voted in the primary from signing nominating petitions for the same general election, John Henry Altorfer could easily have

placed his name on the November general election ballot by securing 25,000 nominating signatures in his home county of Peoria thereby insuring that Governor Shapiro would be reelected as it is obvious that the Republican voters in the general election would have been as torn asunder by the Richard B. Ogilvie and John Henry Altorfer election as they were in the June primary.

To permit any registered voter who has voted in the primary preceding the particular general election to sign such a petition would in effect be giving him two votes and obviously run afoul of this Court's principle of one-man one-vote.

CONCLUSION

It is respectfully submitted therefore that plaintiff presents no substantial question for the decision of this Court and that this appeal should be dismissed.

Respectfully submitted.

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